

February 28, 2007

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST**

Re: WFFF-DT, Burlington, Vermont  
Facility Id. No. 10132  
MB Docket No. 05-317  
Request for Six-Month Extension of DBS Testing Waiver

Dear Ms. Dortch:

On behalf of Smith Media License Holdings, LLC ("Smith") permittee of WFFF-DT, Burlington, Vermont, and pursuant to the *Order in Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension And Reauthorization Act of 2004*,<sup>1</sup> we hereby request a six-month extension of the waiver of Section 339(a)(2)(D)(vii) of the Communications Act of 1934, as amended,<sup>2</sup> which the Commission granted for WFFF-DT on May 1, 2006.<sup>3</sup> As Smith recently explained, Smith believes it will complete construction and commence digital operations of WFFF-DT around July 13, 2007.<sup>4</sup> Accordingly, because Smith will not complete construction until after its waiver expires on April 30, 2007, Smith respectfully requests a three-month extension.

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<sup>1</sup> See Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension And Reauthorization Act of 2004, *Order*, 21 FCC Rcd 12894, ¶ 5 (2006) ("*Waiver Order*")

<sup>2</sup> See 47 U.S.C. § 339(a)(2)(D)

<sup>3</sup> See *Waiver Order* at ¶ 8.

<sup>4</sup> See FCC File No. BEPCDT-20070112AHD.

The Satellite Home Viewer Extension and Reauthorization Act of 2004<sup>5</sup> ("SHERVA") permits certain satellite subscribers to qualify for satellite retransmission of distant digital network signals unless the Commission grants the local network station a waiver.<sup>6</sup> To qualify for a waiver, or an extension thereof, the local network station must demonstrate that its digital signal coverage is limited due to the unremediable presence of one or more of the following factors:

- (I) the need for international coordination or approvals;
- (II) clear zoning or environmental legal impediments;
- (III) force majeure;
- (IV) the station experiences a substantial decrease in its digital signal coverage area due to necessity of using side-mounted antenna; or
- (V) no satellite carrier is providing the retransmission of the analog signals of local stations under section 338 in the local market.<sup>7</sup>

In the *Waiver Order*, the Commission agreed that WFFF-DT qualified for a waiver because zoning and environmental legal impediments had prevented Smith from completing construction of its DTV facilities on Mt. Mansfield.<sup>8</sup> In particular, environmental and zoning opposition caused an eight-year delay before the Vermont District Five Environmental Commission approved construction of the proposed DTV tower. During this eight-year period, Smith did not have other options because the State of Vermont's restrictive environmental regulations required all television broadcasters in the state to present a joint tower proposal. In January 2003, the broadcasters reached a settlement agreement with the state and submitted an application for zoning approval. Finally, in April 2005 the state issued a permit approving the construction of the proposed tower.

Upon receiving zoning approval, construction crews immediately began constructing a new DTV tower, but extreme weather conditions on Mt. Mansfield, the highest point in Vermont, render heavy construction virtually impossible between October 15 and June 1.

In October 2006, inclement weather forced the construction crews to suspend construction for the winter before Smith could complete construction of full-power facilities. Access to the Mt. Mansfield site should be restored around June 1 when the winter snows have melted sufficiently. Shortly thereafter, Smith expects to complete the final stages of construction and install its DTV antenna. All told, Smith believes it will implement its full-power DTV facilities around July 13, 2007.

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<sup>5</sup> Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No. 108-447, 118 Stat. 3393.

<sup>6</sup> See 47 U.S.C. § 339(a)(2)(D)(viii).

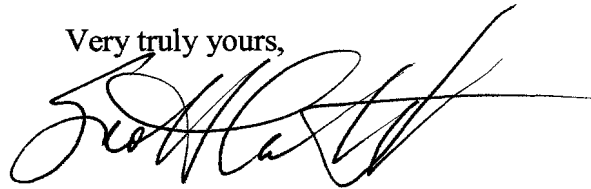
<sup>7</sup> *Id.*

<sup>8</sup> See *Waiver Order*, ¶ 8.

In its first order granting digital testing waivers, the Commission acknowledged that even after impediments from international coordination or zoning requirements are removed, it may take at least a year before a licensee can complete construction of its DTV facilities, and during that construction period continued waiver is justified.<sup>9</sup> On April 30, 2007, Smith will have had a total nine months of favorable weather conditions since obtaining zoning approval to complete construction of its DTV facilities. Accordingly, pursuant to Section 339(a)(2)(D)(viii), we respectfully submit that WFFF-DT qualifies for a three-month extension of its waiver under the Act, and we request that the Commission grant such an extension for WFFF-DT.

Please contact me if you have any questions about this extension request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott S. Patrick", with a long horizontal flourish extending to the right.

Scott S. Patrick

cc: Ms. Nazifa Sawez (FCC) (*via e-mail*)

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<sup>9</sup> See Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension And Reauthorization Act of 2004, *Order*, 21 FCC Rcd 4813, ¶ 9 n.16 (2006) (granting waiver requests for two stations even though the Canadian government granted its concurrence almost a year earlier).